

REMARKS / ARGUMENTS

This is intended as a Supplemental Response to the Final Office Action dated 01/11/2007, having a shortened statutory period for response set to expire on 4/11/2007. The Applicant has previously submitted a Response to the Final Office Action on March 12, 2007, but has since then noted a deficiency regarding MPEP citations given in the Response.

This supplemental Response is filed in addition to the Response to Final Office action to clarify the relevant citations from the MPEP. In particular, the Applicant wishes to clarify the citation for the Applicant's assertion that it is well-established that a reference is only effective as of its earliest effective filing date for what it actually discloses. The Applicant refers the Examiner to MPEP § 2136.03(III) and (IV).

Section 2136.03(III) recites that the 102(e) critical reference date of a U.S. Application Publications is entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) if the provisional application properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.

Section 2136.03(IV) recites that in order to carry back the 35 U.S.C. 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the U.S. patent reference must have a right of priority to the earlier date under 35 U.S.C. 120 or 365(c) and the parent application must support the invention claimed as required by 35 U.S.C. 112, first paragraph.

In this case, neither the Provisional '491 nor the Nonprovisional '461 discloses the subject matter relied upon in the U.S. Publication No. 2004/0204315 by the Examiner. Therefore, the subject matter on which the Examiner relies is not entitled to the earliest effect filing date of the U.S. Publication No. 2004/0204315. Rather, the subject matter on which the Examiner relies is only available as prior art as of April 27, 2004, which is after the Applicants' filing date.

CONCLUSION

Accordingly, it is believed that the present application now stands in condition for allowance, and allowance of the claims is respectfully requested. Early notice to this effect is earnestly solicited. If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact the undersigned attorney at the number listed below, or Gero McClellan at (336) 643-3065, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. McClellan, Reg. No. 44,227/

Gero G. McClellan
Registration No. 44,227
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicants